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OMB has pressed us for a response this afternoon rather than tomorrow as originally scheduled in order to get our views in the Administration position on the Hughes and Ryan amendments to the Foreign Assistant bill. We have given Frey a xerox copy of the attached with the understanding that it is subject to your approval. If you have no objection we will go ahead and send him the original.

George L. Cary
Legislative Counsel

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 Nov. 1974

Mr. James L. Frey
Deputy Associate Director, International Affairs
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to the November 12th request of Mr. Arnold Donahue of your office for the views of this Agency on a proposed new section in the Foreign Assistance Act of 1961 which limits intelligence activities, specifically proposed new section 660 in H.R. 17234 and section 661 in S. 3394. Both of these sections have the identical basic purpose of limiting expenditures by or on behalf of the Central Intelligence Agency for clandestine operations other than those for intelligence collection.

With respect to preferences in language between the two versions:

(a) The language "operations in foreign countries" in section 660, as opposed to "covert action operations" as used in section 661 is preferable in the interest of not admitting to covert action in United States Statute and eliminating definitional uncertainty. If there is an opportunity for the insertion of totally new language, it is recommended that the wording be changed to "pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U.S.C. 403)."

(b) With respect to the Presidential finding to remove the bar to expenditures, it would be preferable to use the language of section 660, "important to the national security of the United States," rather than the more restrictive language "vital to the defense of the United States" of section 661. A strict interpretation of the latter phrase may require a finding involving the territorial integrity of the nation.

(c) Regarding the contents of the report to be submitted to the Congress by the President, the language of section 661 is preferable, as the details to be reported are modified by the word "appropriate" which would provide flexibility for omitting extremely sensitive details.

(d) With respect to the committee recipient of the President's findings and report, the language of section 661 limiting such reporting to committees "presently having jurisdiction to monitor and review" intelligence activities is preferred.

(e) With respect to subsection "(b)" the preference is for the language of section 660 because it does not contain the words "covert action" as does section 661.

It can be argued that the proposed new section merely implements agreements made between the Executive branch and congressional leaders. In fact, the proposed new section goes far beyond these agreements as we understand them. Therefore, we would not want the above-stated preference in language to be construed as an Agency position that the Administration should support such a new section. To the contrary, it is believed that strong arguments against such a position exist and they include:

(a) The foreign assistance legislation is an inappropriate vehicle for such a provision of law.

(b) No committee hearings have been held on the proposition and it is doubted that its implications have been adequately studied.

(c) A provision which in effect requires reporting of the type of programs covered by the proposed new section is included in legislation introduced by Senator Stennis and Representative Nedzi, which has received Administration support and on which the Director has testified before the Nedzi Intelligence Subcommittee. Both of these bills are before committees having legislative jurisdiction over the subject matter.

(d) There are movements in both the Senate and the House which make such a new section somewhat redundant, this includes Chairman Stennis' invitation to the Majority and Minority Leader, both members of the Foreign Relations Committee, to participate in sessions of the Senate Armed Services Intelligence Subcommittee; and an amendment to the Rules of the House which grants the House Foreign Affairs Committee certain jurisdiction with respect to intelligence activities affecting foreign policy.

(e) The proposal could impinge upon Presidential power not shared with the Congress. Whether the President fulfills such Constitutional responsibility privately or covertly, using the CIA as a mechanism, should make no difference and certainly does not eliminate the necessity for speed, dispatch, and secrecy to enhance the prospects of success.

In addition to the proposed new section dealing with limitation on intelligence activities, this Agency also has a ~~complaint~~ ^{problem} with sections of S. 3394 imposing ceilings on U. S. Government obligations in Indochina. These sections bar the obligation of any funds in excess of the stated ceilings, "for the purpose of carrying out directly or indirectly any economic or military assistance, or any operation, project, or program of any kind." This language is so broad that it could be construed to encompass normal U. S. Government activities, such as embassy staffing and intelligence collection.

Similar language was used in the Fiscal 1972 Defense Appropriations Act to limit U. S. expenditures in Laos, but to eliminate the overbreadth problem the House-Senate conferees included language in the conference report to make it clear that:

"... the conferees wish to make it understood that it is not the intent to place a ceiling on, or reduce, funds available for vital non-assistance-related activities in programs which must be carried on irrespective of assistance-related operations in Laos, such as the normal expenses incurred by the State Department

in the operation of its embassy and such normal and usual expenses of the embassy as would be incurred in peacetime in the absence of any military, paramilitary, or economic assistance programs of any kind. "

I appreciate this opportunity to express our views on this bill, and trust they will be given due consideration.

Sincerely,

George L. Cary
Legislative Counsel

Distribution:

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1 - S. 3394/H. R. 17234
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OLC:LLM:cg (14 Nov 74)